firm. If it was an admission by the receivers and managers of the business of the old firm, then they have no cause to complain against the order granting the plaintiffs leave to enter judgment for the balance of the amount claimed. Nor would they have any cause to complain if the admission of liability was by them as partners of the new firm. As the name of the new firm would appear to indicate, it seems reasonable to assume that the business of the old firm, which ceased to exist, was being carried on by the new firm as a partnership. Substantially justice has been done and it was pointless to argue that the proper party has not been sued. On record the old firm is still named as the appellant in this appeal. If it was thought necessary to object to it being sued as the defendants in the action, there was nothing to prevent a technical defence being raised after summary judgment was refused by Syed Agil Barakbah J. But no defence whatsoever was filed and in the usual way the plaintiffs would have been entitled to obtain judgment under Order 27 rule 2 of the Rules of the Supreme Court. It is not necessary to speculate as to what would have happened if a defence had been filed. On the remaining question whether the letter from Mr. J. K. Tan amounts to an admission of liability to pay the sum claimed by the plaintiffs, I have no doubt that Sharma J. was right in his conclusion that it was such an admission. The implication of the letter is so clear that no other conclusion is possible.

Accordingly, I would dismiss the appeal with costs here and below.

Azmi L.P. and **Syed Othman J.** concurred.

Appeal dismissed.

Solicitors: *Mah & Kok; Tay Leong Siak.*

LIM MOH JOO v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Suleiman J.) May 16, 1970]
[Alor Star — Criminal Appeal No. 69 of 1968]

Criminal Law and Procedure — Medical report of alleged assault — Report given in evidence without calling the maker thereof — Copy of report to be given to accused not less than 10 clear days before trial — Whether provision applicable in case of a prosecution by private person — Interpretation of statute — Criminal Procedure Code (Cap. 6), ss. 380 and 399(i).

Interpretation — Statute — Intention of legislature — Where court has to modify language of law to meet intention of legislature.

The appellant had been charged and tried on a private summons for having used criminal force upon the complainant. In the course of her evidence the complainant produced two medical certificates from a medical officer but that officer was not called to give evidence. No copy of the report had been supplied to the appellant.

Held, allowing the appeal: the provisions of section 399(i) of the Criminal Procedure Code (Cap. 6) which require the Public Prosecutor to deliver a copy of the report to the accused not less than 10 clear days before the commencement of the trial should be applied where the prosecution is by a private person and in this case as such provision was not complied with, the reports were inadmissible in evidence and therefore the order binding over the appellant must be quashed.

Cases referred to:-

(1) *Wong Kok Keong* v. *R.* [1954] M.L.J. xxxix.

(2) *Seaford Court Estates Ltd.* v. *Asher* [1949] 2 All E.R. 155.

MAGISTRATE'S CRIMINAL APPEAL.

Albert S. C. Hoe for the appellant.

Tunku Mukhtar bin Tunku Yaacob (Deputy Public Prosecutor) for the respondent.

Wan Suleiman J.: The appellant was charged and tried in the magistrate's court on a private summons taken out by the complainant, for having used criminal force upon the latter, an offence punishable under section 352 of the Penal Code.

In the course of her testimony the complainant produced two medical certificates, from the same medical officer. There is some doubt as to whether the learned magistrate had considered the one issued on the day of the alleged assault, or the one issued the following day, the latter adding one more injury to that mentioned in the first report. From the grounds of judgment, however, it would seem that the latter certificate was the one taken into account, though failure to include a copy thereof in the appeal file in which only a copy of the earlier certificate had been included, had given rise to criticism of his grounds of judgment by learned counsel for the appellant.

No witness was called by the complainant.

The appellant's defence was a denial that there had been any assault on the complainant since he was not in the vicinity of the building in which both lived at the time of the alleged assault. He called a witness who testified to the same effect.

The learned magistrate found the appellant guilty and bound him over, and in addition ordered him to pay $45 as compensation to the complainant.

Now there is nothing on record to indicate that the appellant had been served with a copy of the medical report, and it was urged on his behalf that section 399 (i) (b) of the Criminal Procedure Code (Cap. 6) applies not only to the Public Prosecutor, but also to a case of this sort where there is a prosecution on a private summons by a private person.

The relevant portion of section 399(i) reads as follows: —

"Any document purporting to be a report under the hand of any of the persons mentioned in sub-section (ii) of this section upon any person ... examined ... by him ... may be given in evidence in any inquiry, trial or other proceeding under this Code unless such person ... shall be required to attend as a witness —

(a) by the court; or

(b) by the accused, in which case the accused shall give notice to the Public Prosecutor not less than three clear days before the commencement of the trial:

Provided always that in any case in which the Public Prosecutor intends to give in evidence any such report he shall deliver a copy thereof to the accused not less than ten clear days before the commencement of the trial."

The learned deputy contended that the proviso above-mentioned applies only where the Public Prosecutor or persons acting under him have custody of the prosecution, and does not apply to private prosecutions in a non-seizable offence, to which category the present offence belongs.

It will be pertinent to examine at this stage section 380 of the Criminal Procedure Code. Section 380 reads: —

"Notwithstanding anything in this Chapter contained —

(i) ...

(ii) In summary non-seizable cases in the Court of a Magistrate —

(a) The Public Prosecutor or a Deputy Public Prosecutor or a Police Officer may appear and conduct any prosecution;

(b) ...

(c) Any private person may appear in person or by advocate or, in the State of Trengganu, by a pleader and prosecute for an offence against his own person or property."

One would then be faced with the absurd situation, if the learned deputy is correct in his submission, of the Public Prosecutor (or those appearing on his behalf), having to supply the defendant with a copy of the medical report 10 clear days before the trial should he or those deputed by him choose to conduct the prosecution, whilst a private prosecutor need not do so.

This absurd situation grows in magnitude when one considers the obvious purpose of section 399 of the Criminal Procedure Code.

In the case of *Wong Kok Keong* v. *Regina*[1] Spenser Wilkinson J. held that the effect of section 427(i) of the Criminal Procedure Code (S.S.) (which is identical in terms with our section 399(i)) is to make certain documents evidence of the truth of their contents, which would otherwise not be evidence at all, and that therefore the provisions of that sub-section are provisions relating to evidence rather than to procedure. With this conclusion I would with respect concur.

Failure to comply with the sub-section would only be curable, the learned judge goes on, by virtue of section 488 (Straits Settlements Criminal Procedure Code (Cap. 21)), (our section 422, Criminal Procedure Code (Cap. 6)) if, without the inadmissible report there was evidence sufficient to justify the finding of the court below.

To accept the learned deputy's view is to accept a double standard whereby what is inadmissible evidence where the Public Prosecutor prosecutes becomes admissible evidence in the hands of a private prosecutor. Moreover it is reasonable to assume that in requiring the Public Prosecutor to give no less than ten days notice to the accused where he intends to give in evidence such report, it is the intention of the legislature that such notice would enable the accused to opt between allowing such evidence to be admitted or to require the maker of such report to appear in person under section 399(i)(b). It would follow that not to require private prosecutors to give notice of a similar intention would rob an accused person of such option, a result which would surely be unjust.

This is, in my judgment, a case where this court must modify the language of the law to meet what must be the intention of the legislature. I need hardly add that there is ample authority to support this course. As Denning L.J. said in *Seaford Court Estates, Ltd.* v. *Asher*[2] —

"It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (Sir Roger Manwood C.B. and the other barons of the Exchequer) in *Heydon's* Case and it is the safest guide to-day."

Both the medical certificates admitted in this case are therefore in my opinion inadmissible, and without these there is insufficient evidence to support the finding of the lower court.

Accordingly, the appeal is allowed. The order binding over the appellant is set aside, and sum ordered to be paid as compensation, if paid, should be refunded to the appellant.

Appeal allowed.

Solicitor: *A. S. C. Hoe.*

PHIONG KHON v. CHONH CHAI FAH

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) & Lee Hun Hoe J.) May 29, 1970]

[Kuching — Federal Court Civil Appeal No. X.8 of 1969]

Chinese Law and Custom — Extent to which recognised in Sarawak — Validity of Chinese marriage — Document transferring interest in land — Whether oral evidence admissible to explain document — Application of Chinese customary law to succession on intestacy — Chinese Marriage Ordinance (Cap. 74) — Administration of Estates Ordinance (Cap. 80) — Evidence Ordinance (Cap. 57), s. 94.

Evidence — Admission of extrinsic evidence to construe and interpret document in the light of surrounding circumstances — Evidence Ordinance (Cap. 57), s. 94.

Contract — Intention to create legal relationship — Family arrangement.

In this case one Jong Nyit Siong (f) died having certain property including the land in dispute. By her first marriage she had a daughter and a son, the respondent herein. After the death of her husband, she set up home with the appellant until her death. Her union with the appellant was not registered. The respondent had executed a document which the appellant alleged was a transfer of the land in dispute to him, but which the respondent said was intended to give only a life interest in the land.

Held, dismissing the appeal: (1) extrinsic evidence was admissible in this case to explain or interpret the written document;

(2) on the facts the appellant had not discharged the onus of showing that the document was a transfer of land to him.

Observations on the application of Chinese customary law in Sarawak. A Chinese marriage contract in Sarawak